CHEN CHI WEI v. KHOH KENG CHONG.

[Court of Appeal (Brown, Ag. C.J., Storr and Abbott, JJ.) April 19, 1951]

[Singapore — Civil Appeal No. 23 1950]

Landlord and Tenant — Control of Rent Ordinance, 1947, s. 14(1)(b) and (d) — Possession Agreement by tenant to effect specific repairs — Proceedings previously brought by plaintiff when an infant — Defence res judicata and agreement to repair void for non-compliance with Premiums on Leases Ordinance (Cap. 120), s. 2 — Notice to quit — Ambiguity in.

Dr. Chen Su Lan purchased the property in question and had it conveyed to his infant son, the plaintiff in this case. He intended the plaintiff to have the beneficial ownership. In December, 1945, Dr. Chen Su Lan entered into two agreements with the defendant (the Agreements are set out in the Judgment of Murray-Aynsley, C.J.). Under the first agreement, the defendant, in consideration of his being given immediate occupation of the premises in question, undertook to effect certain specific repairs by the end of the year and under the second agreement the parties agreed (i) that the tenancy shall be monthly and may be terminated by either the tenant or the landlord on giving a month's notice in writing terminating with a completed month of his tenancy, and (ii) that the tenant undertook (a) to cause no damage or alteration to the premises, and (b) not to sub-let without the written permission of the landlord and the Municipality.

In 1948 the plaintiff, still a minor, brought an action to recover possession. This failed on the ground that during the minority all powers of management were vested in the guardian. In November 1949, the plaintiff, having attained majority, brought the present proceedings.

In the present action the plaintiff claimed the possession on the grounds that the defendant failed to carry out the repairs stipulated in the first agreement and further that the defendant, without authority, made certain alterations to the premises. Furthermore the defendant sublet part of the premises without permission. The defendant pleaded inter alia that the first of the two agreements entered into by him was illegal and unenforceable and that the issues raised in this action, being identical with issues raised in the previous action when the plaintiff was unsuccessful, were res judicata.

The learned Chief Justice found that both by subletting and by making alterations to the premises complained of, the defendant has deprived himself of the protection of the Control of Rent Ordinance. As regards the defence of res judicata the learned Chief Justice decided that the proceedings of 1948 failed only on the ground that during the minority all powers of management were vested in the guardian and the plaintiff was not debarred from bringing proceedings again after attaining majority. Judgment was given for the plaintiff with costs on October 11, 1950.

The defendant appealed and at the hearing of the appeal the counsel for the appellant argued that the notice to quit was bad for ambiguity (although this point was not referred to in the Grounds of Appeal).

Held by the Court of Appeal, (1) that the first agreement was not illegal by reasons of the provisions of sections 2 of the Premiums on Leases Ordinance not having been complied with; (2) that the defence of res judicata failed as the plaintiff, as the person in whom the premises are vested, was entitled to sue, when he came of age, for his remedies under the agreement; and (3) that the notice to quit was not ambiguous if it is read in conjunction with the tenancy agreement.

Cases referred to:—

(1) *Melliss v. Shirley Local Board of Health* 16 Q.B.D. 451.

(2) *Phipps & Co. v. Rogers* (1925) 1 K.B. 14.

CIVIL APPEAL.

L. A. J. Smith for the defendant-appellant.

J. K. Gale for the plaintiff-respondent.

Murray-Aynsley, C.J. : — In this case the facts are simple. Before the events which gave rise to this litigation Dr. Chen Su Lan purchased the property in question and had it conveyed to his infant son, the present plaintiff. He intended the plaintiff to have the beneficial ownership. In December, 1945, Dr. Chen Su Lan entered into two agreements with the defendant. They are dated December 4th and 5th and are in the following terms :—

"33, Minto Road,
Singapore.
4.12.1945.

"Dr. Chen Su Lan,
9, St. Thomas Walk,
Singapore.

Sir,

Re 31-43, Lorong 4 (odd Nos.) Geylang.

In consideration of your consent to give me immediate occupation of the above premises without doing the repairs yourself and of your undertaking not to increase the rent within two years and not to let them to other people, I hereby undertake to repair the above premises at my expense.

The repairs shall consist of:

1. Rebuilding of the back wall where it is absent or cracked.
2. The refitting of doors and windows which are damaged or absent.
3. The rebuilding of all partition walls, except two, where they are absent.
4. Refitting of ceiling.
5. Refitting of electric and water services.
6. Whitewashing and painting.

Except for the roof, the repairs shall restore the premises to their original condition and shall be completed before 30th December, 1945.

It is understood that I am not to be considered as your tenant until repairs are completed to your satisfaction.

I am, yours faithfully,
sgd. Khoh Keng Chong (in Chinese)
5/12/45."

"Singapore, 5.12.45.

"No. 130.

Premises: No. 31, 33, 35, 37, 39, 41, 43 Lorong 4, Geylang, Singapore.

Tenant's Name: Khoh Keng Chong.

Tenant's Address: 33, Minto Road.

Tenancy shall be monthly and may be terminated by either the tenant or the landlord on giving a month's notice in writing terminating with a completed month of his tenancy.

Rent per month per Chinese moon shall be $126 payable in advance.

Tenancy shall commence on 20th December 1945 on the ..... day of the ..... th moon of ..... year.

The tenant shall not transfer the tenancy to another person or sublet the house without the previous written sanction of the landlord.

The tenant shall do all repairs up to the amount of $..... for each item of repairs and not allow repairs to accumulate.

The tenant shall cause no damage or alteration to the walls, timber roof, floors, partitions, or remove any fixtures or fittings, nor erect any cubicle without the written permission of the landlord and the Municipality.

The premises shall not be used as a brothel or opium den.

Deposit of $420 has been received by the landlord and shall be held by him as security for any claim whatever by him against the tenant.

"I agree to the above,
sgd. in Chinese
Tenant.

I confirm the above,
C. W. CHEN
sgd. illegible
Agent
Landlord."

The defendant then occupied the premises and still occupies them.

The plaintiff complains that the defendant failed to carry out the repairs stipulated in the first agreement and further that the defendant without authority made certain alterations set out in paragraph 6 of the Statement of Claim. The defendant also sublet part of the premises as he himself stated in paragraph 2 of his Defence.

It is admitted that the ceiling was refitted with card-board of some kind, whereas it appears that earlier it had been of asbestos. It is also clear that of the four partition walls that were missing one was wholly replaced and two partially. This was not a performance of that part of the contract. The defendant also fitted wooden bars to the windows where it appeared that there had previously been iron bars.

As to the alterations alleged to have been made by the defendant, there is a conflict of evidence. After consideration of the evidence and of the documents I find as a fact that the defendant was responsible for the alterations complained of by the plaintiff.

On June 27th, 1947, a notice to quit was given by the plaintiff. It was in the following terms :—

"Dear Sir,

We have been instructed by Chen Chi Wei, who is the owner of Nos. 31, 33, 35, 37, 39, 41 & 43 Lorong 4 Geylang Road, Singapore, and by his father Dr. Chen Su Lan, as his guardian, to and hereby give you notice to quit and deliver up possession on the 31st day of July 1947 or at the expiry of the next complete month of your tenancy which will terminate more than one month from the date of the receipt by you of this letter of the said land and premises known as Nos. 31, 33, 35, 37, 39, 41 and 43 Lorong 4, Geylang Road, Singapore.

Yours faithfully,
sgd. Sisson & Delay.

Mr. Khoh Keng Chong,
No. 31, Lorong 4, Geylang Road,
Singapore."

I consider that this notice was effective.

In 1948 the plaintiff, still a minor, brought an action to recover possession. This failed on the ground that during the minority all powers of management were vested in the guardian.

On November 2nd, 1949, the plaintiff, having then attained majority, brought the present proceedings. I consider that the bringing of earlier proceedings did not bar him from bringing the present proceedings.

The Guardianship of Infants Ordinance gave the father as guardian power of management of the property. I consider that on attaining majority the plaintiff can take advantage of the acts of the guardian and is also bound by them. Unless the defendant admits the validity of the tenancy granted by the guardian he has no right at all to be in possession.

The question is whether the plaintiff is entitled to possession. I consider that both by subletting and by making the alterations to the premises complained of the defendant has deprived himself of the protection of the Control of Rent Ordinance.

In addition to possession I consider that the plaintiff is entitled to damages for the breach of the covenant to repair. I understand that counsel for the defendant no longer contended that this was illegal. He is also entitled to damages in respect of the unauthorised alterations and to mesne profits.

Judgment for plaintiff accordingly with costs.

From the above judgment the defendant appealed.

Brown, Ag. C.J. : — The first point which is raised in the Grounds of Appeal is that the agreement whereby the defendant undertook to do the repairs before the tenancy came into operation was illegal because it contravened the provisions of section 2 of the Premiums on Leases Ordinance (Cap. 120). This Ordinance makes it an offence for a landlord to require any consideration whatsoever as a condition of granting a tenancy unless particulars of the consideration are set out in writing and forthwith presented for inspection to the appropriate authority. It is conceded

that this provision could not have been complied with at the time because the Municipal was not then functioning. But it is said that the statute does more than impose a penalty, and that non-compliance with its provisions renders the contract void. The statute does not invalidate the contract in express terms. But following the judgment of the Master of the Rolls in *Mellis v. Shirley Local Board*[1] we have to look at the statute as a whole and consider whether it imposes a penalty merely to deter persons from entering into such a contract, or for the purposes of revenue, or whether it is intended that a contract so entered into shall be valid in law. This is an Ordinance "to control the taking of Fines or Premiums on grant of Tenancies and to provide for the giving of Rent-Receipts." It does not prohibit the practice of taking "fines or premiums." It controls it. And the method of controlling it is to require that the particulars shall be presented in writing by the landlord for inspection by the Municipal Commissioners or the Rural Board of the area in which the premises are situate. These authorities are the authorities which are concerned with assessments. And it seems to me that one of the reasons for requiring the presentation of the particulars for inspection by these authorities is in order to preclude the giving of a consideration as a condition of the grant of a tenancy from being used as a device for avoiding a just and proper assessment. This might well happen if, unknown to the authorities, a substantial premium was paid before the tenancy commenced, and thereafter the premises were let at a rent which was less than their real value. I consider that at any rate one of the objects of this statute is to protect the revenue. In such cases the inference usually is that the contract itself is not prohibited and void, though a failure to comply with the provisions of the statute is made a penal offence. That the inference in this case is supported by the wording of the statute, both in its long title and in the material section, I do not doubt. In my opinion this contract was valid.

The next point taken in the Grounds of Appeal is that the learned Chief Justice in making an order for possession under section 14(1) (b) of the Control of Rent Ordinance, 1947, for breach of the obligations of the tenancy did not direct his mind to the question of "reasonableness", which is an essential requirement to the making of an order for possession under section 14(1) (b). But the learned Chief Justice also found as a fact that the defendant was responsible for the alterations to the premises, which brought the case under the provisions of section 14(1) (d). No consideration of "reasonableness" is required under that paragraph as is required under paragraph (b).

The final ground which is raised in the Grounds of Appeal is that the matter was *res judicata*. At the hearing before us the point was argued somewhat differently to the way in which it is set out in paragraph 7 of the Grounds of Appeal. In paragraph 7 it is alleged (a) that at the material date the plaintiff was not the landlord of the premises, and (b) that it had been so held at the first trial. In my opinion neither of these propositions is correct. I refer to the following passage from the judgment at the second trial :—

> "Before the events which gave rise to this litigation Dr. Chen Su Lan purchased the property in question and had conveyed to his infant son, the present plaintiff."

No exception had been taken to that passage and I accept it as the fact. The estate was therefore vested in the plaintiff and he was the landlord. But so long as he was under the disability of infancy he could not sue. That was the decision at the first trial, when it was held that the proper person to sue was the guardian and not the infant. Before the second trial the plaintiff came of age, and the disability of infancy having been thus removed he, as the person in whom the estate is vested, was properly made the plaintiff in the second trial. I can find nothing in the judgment at the first trial to support the allegation which is made in paragraph 7 of the Grounds of Appeal that "the judgment in Suit No. 501 of 1948 established that one Chen Su Lan and not the plaintiff (respondent) was the landlord".

But at the first trial the learned Chief Justice went on to say :—

> "Also, in my opinion, a letting which purports to have been made by the father as agent for the infant must be taken to be a letting by the father as guardian."

In paragraph 2 of the plaintiff's Statement of Claim in the second trial it is alleged that the agreement was made "by Chen Su Lan acting as agent for and on behalf of the plaintiff." Mr. Smith argued before us that this allegation is a direct challenge to the learned Chief Justice's decision in the first trial, and that the matter is *res judicata*. But the *ratio decidendi* in the first trial was that the plaintiff, being an infant, could not sue. And the question of whether the contract was made by the father as agent or as guardian was not material to that decision. In either case the proper person to sue was the father. I agree that in the light of the view expressed by the learned Chief Justice paragraph 2 of the Statement of Claim should not have alleged that the contract was made by the father as agent, but should have been so worded as to allege that the contract was made by the father as guardian

for and on behalf of the plaintiff in the course of his management of the plaintiff's property. But again that was not a material issue. Whether the tenancy agreement was entered into by the father as agent or as guardian, the plaintiff, as the person in whom the premises are vested, was entitled to sue, when he came of age, for his remedies under the agreement.

Although it is not referred to in the Grounds of Appeal, Mr. Smith also argued before us that the notice to quit was bad for ambiguity, and he cited the case of *Phipps & Co. v. Rogers*[2] In that case the notice was in the following terms :—

"We hereby give you notice to quit and deliver up to us . . . . . on the earliest day your tenancy can legally be terminated by valid notice to quit given to you by us at the date of the service hereof . . . . . ."

Thus the tenant was left to ascertain the date on which he was required to leave "as a problem not of fact but of law." It seems to me that the notice in the present case is in no way comparable with the notice in *Phipps & Co. v. Rogers*[2], and that it is not objectionable. The notice here is dated the 27th June, 1947, and it says :—

"We . . . . . hereby give you notice to quit and deliver up possession on the 31st day of July, 1947, or at the expiry of the next complete month of your tenancy which will terminate more than one month from the date of the receipt by you of this letter . . . . . ."

The first paragraph of the tenancy agreement reads as follows :—

"Tenancy shall be monthly and may be terminated by either the tenant or the landlord on giving a month's notice in writing terminating with a completed month of his tenancy."

Mr. Smith says that although the tenancy was a monthly tenancy reckoned according to a lunar month, the notice is bad because it refers to a calender month. But a calendar month is not mentioned in the notice. The term used is "complete month", and the same term is used in the first paragraph of the tenancy agreement. If the tenancy is reckoned according to a lunar month, as from the terms of the tenancy agreement appears to be the case, then the expression "complete month" in the notice refers to a completed lunar month. I can see no ambiguity about this notice if it is read in conjunction with the tenancy agreement.

In my opinion the appeal should be dismissed with costs.

Storr, J. : — I concur.

Abbott, J. : — I concur.

Appeal dismissed.

WINTON v. REX.

[App. Crim. Juris. (Brown, Ag. C.J.) May 30, 1951]

[Singapore — Magistrate's Appeal No. 39 of 1951]

Evidence — Evidence of wife's resources inadmissible — Charge under s. 165 of the Penal Code — Evidence (Special Provisions) Ordinance, 1946, s. 2(1) — Penal Code, s. 27.

In this case the appellant was convicted under s. 165 of the Penal Code of accepting a Raleigh bicycle without consideration from one Lim Chin, a building contractor, whom he knew to be likely to be concerned in business relating to building contracts transacted by himself as a public servant. He was sentenced to six months simple imprisonment and fined $1,000 or a further six months simple imprisonment in default. During the course of the trial evidence of the pecuniary resources of the appellant's wife was admitted under section 2(1) of the Evidence (Special Provisions) Ordinance, 1946.

Section 2(1) reads: "2. — (1) In any trial of or inquiry by a Court into an offence specified in the Schedule, the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he has, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Court as if it were a relevant fact within the meaning of the Evidence Ordinance."

The Schedule referred to above includes s. 165 of the Penal Code.

The learned District Judge who tried the case held that the evidence of the pecuniary resources of appellant's wife was admissible under s. 27 of the Penal Code.

Held, that since there was no evidence at all to show that the pecuniary resources, which appeared in the wife's bank account were being held by her on account of the appellant, this evidence was inadmissible.

Appeal dismissed. Conviction upheld. Sentence of imprisonment quashed. Sentence of fine to stand.

MAGISTRATE'S APPEAL.

Mark Morrison for the appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Brown, Ag. C.J. : — This appellant was convicted under section 165 of the Penal Code of accepting a Raleigh bicycle without consideration from one Lim Chin, a building contractor, whom he knew to be likely to be concerned in business relating to building contracts transacted by himself as a public servant. He was sentenced to six months simple imprisonment and fined $1,000 or a further six months simple imprisonment in default.

The evidence for the prosecution was that the bicycle was bought by Lim Chin as a present for the appellant's son aged 14, that it was sent to the appellant's house without his knowledge, and that the appellant endeavoured to refund the $165 which Lim Chin had paid for it. Lim Chin, who was called by